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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,324	06/25/2003	Marco Schupp	F-7785	2768
28107	7590	11/04/2004		
JORDAN AND HAMBURG LLP 122 EAST 42ND STREET SUITE 4000 NEW YORK, NY 10168			EXAMINER SMALLEY, JAMES N	
			ART UNIT 3727	PAPER NUMBER

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/603,324	SCHUPP ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	James N Smalley	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 June 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

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## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the:

- a) closing cap covering the coupling and the pressure-relief opening as claimed in claim 9; and
- b) the internal thread on the closure cap coupling with the feeding tube must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 4, it is unclear how the coupling, limited by claim 1 to couple with a feeding tube, can comprise internal threads on the body for screwing onto the container neck. To the best degree the Examiner understands the claimed invention, the internal threads comprise threads (10) in the figures, and cannot couple with the feeding tube.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 4 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 4, it is unclear how the coupling, limited by claim 1 to couple with a feeding tube, can comprise internal threads on the body for screwing onto the container neck. To the best degree the Examiner understands the claimed invention, the internal threads comprise threads (10) in the figures, and cannot couple with the feeding tube.

Claim 9 limits a closure cap covering the coupling and the pressure relief opening. It is unclear what the cap comprises. To the best degree the Examiner understands the claimed invention, cap (7) does not cover the pressure relief opening.

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***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-2, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Oglesbee et al. US 6,012,596.

Oglesbee '596 teaches a closure top, coupling (70), freshness seal (28), pressure relief means (86) with a semi-permeable membrane (44), internal threads (52) for coupling with a container neck, and a closing cap (46) for covering the coupling and pressure relief opening.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oglesbee et al. US 6,012,596 in view of Scheswohl US 2,839,229 and in view of Hanover US Des. 327,848.

Oglesbee '596 does not teach the coupling comprising an external thread and the feeding tube comprising an internal thread.

Hanover '848 teaches a tube having an internal thread for coupling with an external thread, such as that taught by Scheswohl '229 teaches a coupling for a closure comprising a housing with an external thread. Examiner asserts the combination of Hanover '848 and Scheswohl '229 is a mechanical expedient of the internal housing taught by Oglesbee '596.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Oglesbee '596, forming the housing as a projection from the top surface of the closure cap, and providing with an external thread as taught by Scheswohl

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'229, for mating with a tube such as that taught by Hanover '848, because the connection is a mechanical expedient of that taught by Oglesbee '596, and further motivated by the benefit of a secure external connection on the cap to secure a feeding tube. One having ordinary skill would have found it obvious to substitute one well-known housing means for another.

11. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oglesbee et al. US 6,012,596 in view of Hock et al. US 6,119,883.

Oglesbee '596 does not teach a tamper evident locking ring comprising a perforation line traversing the closure skirt.

Hock '883 teaches a locking ring for a threaded closure cap comprising a perforated line (40). It is well known tamper evident rings provide an indication of previous opening of a container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Oglesbee '596, providing it with a tamper evident locking ring such as that taught by Hock '883, motivated by the benefit of providing an indication of prior opening of the container.

12. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oglesbee et al. US 6,012,596.

Oglesbee '596 does not explicitly teach the membrane being formed of felt. However, in col. 6, lines 15-17, the reference teaches, "Filter 44 can be a think disk woven from a synthetic, semi-permeable, hydrophobic fiber material."

Examiner takes Official Notice in view of the above disclosure that it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the membrane/disk of Oglesbee '596 of felt.

***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 5,782,383	US 4,951,845
US 5,462,194	US 4,508,236
US 5,437,655	US 4,235,344
US 5,188,628	US 3,952,902
US Des. 330,332	

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns



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PRIMARY EXAMINER  
11/1/04